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[G.C. §6103]

Attorneys for Defendants
COUNTY OF ALAMEDA and DEREK THOMS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO BRANCH

PATRICIA HIVES, individually and as co-
successor in interest to Decedent Jacori
Calhoun,

CASE NO.: 15-cv-02490-DMR

Plaintiff,

**STIPULATED PROTECTIVE ORDER
REGARDING PRODUCTION OF
CONFIDENTIAL RECORDS**

vs.

COUNTY OF ALAMEDA, municipal
corporation; DEREK THOMS, individually
and in his official capacity as deputy for the
COUNTY OF ALAMEDA et al.,

Defendants. /

The parties, by and through their respective attorneys of record, hereby stipulate to the
following protective order being issued in this matter:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of
confidential, proprietary, or private information for which special protection from public
disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
Protective Order. The parties acknowledge that this Order does not confer blanket protections on
all disclosures or responses to discovery and that the protection it affords extends only to the
limited information or items that are entitled under the applicable legal principles to treatment as

1 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
2 Stipulated Protective Order creates no entitlement to file confidential information under seal;
3 Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and
4 the standards that will be applied when a party seeks permission from the court to file material
5 under seal.

6 2. DEFINITIONS

7 2.1 Party:

8 Any party to this action, including all of its officers, directors, employees, consultants,
9 retained experts, and outside counsel (and their support staff).

10 2.2 Challenging Party:

11 A Party or Non-Party that challenges the designation of information or items under this
12 Order.

13 2.3 Non-Party:

14 Any natural person, partnership, corporation, association, or other legal entity not named
15 as a Party to this action.

16 2.4 Disclosure or Discovery Material:

17 All items or information, regardless of the medium or manner generated, stored or
18 maintained (including, among other things, testimony, transcripts, or tangible things) that are
19 produced or generated in disclosures or responses to discovery by any Party in this matter.

20 2.5 “Confidential” Information or Items:

21 Information (regardless of how generated, stored or maintained) or tangible things that
22 qualify for protection under standards developed under F.R.Civ.P. 26(c). This material includes,
23 but is not limited to, confidential records designated as such, including the existence of such
24 records and/or information.

25 2.6 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:

26 Extremely sensitive “Confidential Information or Items” whose disclosure to another Party
27 or non-party would create a substantial risk of serious injury that could not be avoided by less
28 restrictive means. This material includes but it not limited to officer personnel records, juvenile

1 records, officer disciplinary records, and Internal Affairs files and information on witnesses
2 identified in each parties' initial disclosures.

3 2.7 Receiving Party:

4 A Party that receives Disclosure or Discovery Material from a Producing Party.

5 2.8 Producing Party:

6 A Party or non-party that produces Disclosure or Discovery Material in this action.

7 2.9 Designating Party:

8 A Party or non-party that designates information or items that it produces in disclosures or
9 in responses to discovery as "Confidential" or "Highly Confidential – Attorneys' Eyes Only."

10 2.10 Protected Material:

11 Any Disclosure or Discovery Material that is designated as "Confidential" or "Highly
12 Confidential – Attorneys' Eyes Only."

13 2.11 Outside Counsel:

14 Attorneys who are not employees of a Party but who are retained to represent or advise a
15 party in this action.

16 2.12 House Counsel:

17 Attorneys who are employees of a Party.

18 2.13 Counsel (without qualifier):

19 Outside Counsel and House Counsel (as well as their support staffs).

20 2.14 Expert:

21 A person with specialized knowledge or experience in a matter pertinent to the litigation
22 who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in
23 this action and who is not a past or a current employee of a Party or of a competitor of a Party and
24 who, at the time of retention, is not anticipated to become an employee of a party or a competitor
25 of a Party.

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2.15 Professional Vendors:

Persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection

Each Party or non-party that designates information or items for protection under this

1 Order must take care to limit any such designation to specific material that qualifies under the
2 appropriate standards. A Designating Party must take care to designate for protection only those
3 parts of material, documents, items, or oral or written communications that qualify – so that other
4 portions of the material, documents, items or communications for which protection is not
5 warranted are not swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routine designations are prohibited. Designations that are shown
7 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
8 encumber or retard the case development process, or to impose unnecessary expenses and burdens
9 on other parties), expose the Designating Party to sanctions.

10 If it comes to a Party's or a non-party's attention that information or items that it
11 designated for protection do not qualify for protection at all, or do not qualify for the level of
12 protection initially asserted, that party or non-party must promptly notify all other parties that it is
13 withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations

15 Except as otherwise provided in this Order (see, e.g., second paragraphs of section 5.2(a),
16 below), or as otherwise stipulated or ordered, material that qualifies for protection under this
17 Order must be clearly so designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) For information in documentary form (apart from transcripts of depositions or other
20 pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" at the
21 top of each page that contains protected material and/or the first page of stapled/clipped materials
22 if it is a group of related documents. If only a portion or portions of the material on a page
23 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
24 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
25 level of protection being asserted.

26 A Party or non-party that makes original documents or materials available for inspection
27 need not designate them for protection until after the inspecting Party has indicated which
28 material it would like copied and produced. During the inspection and before the designation, all

1 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
2 inspecting Party has identified the documents it wants copied and produced, the Producing Party
3 must determine which documents, or portions thereof, qualify for protection under this Order,
4 then, before producing the specified documents, the Producing Party must affix the appropriate
5 legend (“CONFIDENTIAL”) at the top of each page that contains Protected Material. If only a
6 portion or portions of the material on a page qualifies for protection, the Producing Party must
7 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and
8 must specify, for each portion, the level of protection being asserted.

9 (b) For testimony given in deposition or in other pretrial or trial proceedings, that the Party
10 or non-party offering or sponsoring the testimony identify on the record, before the close of the
11 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions
12 of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to identify separately
13 each portion of testimony that is entitled to protection, and when it appears that substantial
14 portions of the testimony may qualify for protection, the party or non-party that sponsors, offers,
15 or gives the testimony may invoke on the record (before the deposition or proceeding is
16 concluded) to a right to have up to twenty (20) days to identify the specific portions of the
17 testimony as to which protection is sought and to specify the level of protection being asserted.
18 Only those portions of the testimony that are appropriately designated for protection within the 20
19 days shall be covered by the provisions of this Stipulated Protective Order. The Court Reporter
20 shall be instructed to separately bind the pages of transcribed deposition testimony or exhibits that
21 contain Protected Material and to mark the cover of this separate volume “CONFIDENTIAL.”

22 (c) For information produced in some form other than documentary, and for any other
23 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
24 or containers in which the information or items is stored the label “CONFIDENTIAL.” If only
25 portions of the information or item warrant protection, the Producing Party, to the extent
26 practicable, shall identify the protected portions, specifying that they qualify as
27 “CONFIDENTIAL.”
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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
 2 qualified information or items does not, standing alone, waive the Designating Party's right to
 3 secure protection under this Order for such material. Upon timely correction of a designation, the
 4 Receiving Party must make reasonable efforts to assure that the material is treated in accordance
 5 with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 12 original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
 14 providing written notice of each designation it is challenging and describing the basis for each
 15 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
 16 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
 17 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
 18 begin the process by conferring directly (in person or by telephone; other forms of communication
 19 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
 20 Party must explain the basis for its belief that the confidentiality designation was not proper and
 21 must give the Designating Party an opportunity to review the designated material, to reconsider the
 22 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 23 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 24 has engaged in this meet and confer process first or establishes that the Designating Party is
 25 unwilling to participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
 27 the parties shall follow the procedures for a Motion to Compel set forth by the Magistrate. All
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1 parties shall continue to afford the material in question the level of protection to which it is entitled
 2 under the Producing Party's designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles

5 Unless otherwise ordered by this court, a Receiving Party may use Protected Material that
 6 is disclosed or produced by another Party or by a Non-Party in connection with this case only for
 7 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 8 disclosed only to the categories of persons and under the conditions described in this Order. When
 9 the litigation has been terminated, a Receiving Party must comply with the provisions of section
 10 11 below (FINAL DISPOSITION) unless otherwise ordered by this court.

11 Protected Material must be stored and maintained by a Receiving Party at a location and in
 12 a secure manner that ensures that access is limited to the persons authorized under this Order.

13 7.2 Disclosure of Protected Material

14 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
 15 Receiving Party may disclose any information or item designated "CONFIDENTIAL" or
 16 "HIGHLY CONFIDENTIAL" only to:

17 (a) The Receiving Party's Outside Counsel of Record in this action, as well as employees of
 18 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
 19 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
 20 attached hereto as Exhibit A;

21 (b) The officers, directors, and employees (including House Counsel) of the Receiving Party to
 22 whom disclosure is reasonably necessary for this litigation and who have signed the
 23 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
 25 necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be
 26 Bound" (Exhibit A);

27 (d) The court and its personnel;

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(e) Court reporters and their staff, professional jury or trial consultants, mock jurors, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) During their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;

(g) Parties to this litigation;

(h) The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(i) For purposes of evaluating the settlement value or potential jury verdict, Counsel for Plaintiff may discuss the general nature of the “CONFIDENTIAL Information” with Plaintiff. Plaintiff’s Counsel may also review with Plaintiff any statement or interview given by that Plaintiff.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax or e-mail, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the existence of
 2 this Protective Order and to afford the Designating party in this case an opportunity to try to
 3 protect its confidentiality interests in the court from which the subpoena or order issued. If the
 4 Designating Party timely seeks a protective order, the Party served with the subpoena or court
 5 order shall not produce any Protected Material before a determination by the court from which the
 6 subpoena or order issued, unless the Party has obtained the Designating Party's permission. The
 7 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
 8 confidential material – and nothing in these provisions should be construed as authorizing or
 9 encouraging a Receiving party in this action to disobey a lawful directive from another court.

10 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 12 Material to any person or in any circumstance not authorized under this Stipulated Protective
 13 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 14 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
 15 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 16 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
 17 Be Bound” that is attached hereto as Exhibit A.

18 10. FILING PROTECTED MATERIAL

19 Without written permission from the Designating Party or a court order secured after
 20 appropriate notice to all interested persons, a Party may not file in the public record in this action
 21 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
 22 with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed under
 23 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
 24 Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a
 25 request establishing that the Protected Material at issue is privileged, protectable as a trade secret,
 26 or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
 27 Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the
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1 court, then the Receiving Party may file the information in the public record pursuant to Civil
2 Local Rule 79-5(e) unless otherwise instructed by the court.

3 11. FINAL DISPOSITION

4 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
5 days after the final termination of this action, defined as the dismissal or entry of judgment by the
6 district court, or if an appeal is filed, the disposition of the appeal, each Receiving Party must
7 return all Protected Material to the Producing Party. As used in this subdivision, “all Protected
8 Material” includes all copies, abstracts, compilations, summaries or any other form of
9 reproducing or capturing any of the Protected Material. With permission in writing from the
10 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
11 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
12 submit a written certification to the Producing Party (and, if not the same person or entity, to the
13 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
14 the Protected Material that was returned or destroyed and that affirms that the Receiving Party has
15 not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
16 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
17 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
18 correspondence or attorney work product, even if such materials contain Protected Material. Any
19 such archival copies that contain or constitute Protected Material remain subject to this Protective
20 Order as set forth in Section 4 (DURATION), above.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
23 modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
25 Party waives any right it otherwise would have to object to disclosing or producing any
26 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
27 Party waives any right to object on any ground to use in evidence of any of the material covered by
28 this Protective Order.

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Acknowledgment and Agreement to Be Bound

Exhibit A to Stipulated Protective Order

I, _____, (include complete name) of
_____(include company name and address), declare under
penalty of perjury that I have read in its entirety and understand the _____, 2016 Stipulated
Protective Order that was issued by the United States District Court for the Northern District of
California in *Hives v. County of Alameda et al.* 15-cv-02490-DMR. I agree to comply with, and
to be bound by, all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to comply could expose me to sanctions and punishment including
contempt of court. I agree and promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if any enforcement proceedings occur after termination of this action.

I hereby appoint _____ (include complete name) of
_____ (include company name and address) as my
California agent for service of process in connection with this action or any proceedings related
to the enforcement of this Stipulated Protective Order.

DATED: _____, 2016

By: _____

**CERTIFICATION BY TIMOTHY P. MURPHY PURSUANT TO LOCAL RULE NO.5-1,
SECTION (i)(3). RE E-FILING ON BEHALF OF MULTIPLE SIGNATORIES**

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3 1. I am an attorney licensed to practice law in the State of California, and am an
4 attorney in the law firm of Edrington, Schirmer & Murphy, counsel for Defendants COUNTY OF
5 ALAMEDA and DEREK THOMS. The statements herein are made on my personal knowledge,
6 and if called as a witness, I could and would testify thereto.

7 2. The above e-filed document contains multiple signatures. I declare that
8 concurrence has been obtained from each of the other signatories to file this jointly prepared
9 document with the Court. Pursuant to Local Rule 5-1, section (i)(3), I shall maintain records to
10 support this concurrence for subsequent production for the Court if so ordered, or for inspection
11 upon request by a party until one year after final resolution of the action (including appeal, if any).
12 I declare under penalty of perjury under the laws of the United States of California that the
13 foregoing is true and correct on March 18, 2016.

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16 /s/
Timothy P. Murphy